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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/554,288	01/09/2001	Hans Wilhelm Hafner	KKFI40.001AP	3625

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EXAMINER	
SHAPIRO, JEFFERY A	
ART UNIT	PAPER NUMBER
3653	

DATE MAILED: 04/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/554,288	HAFNER, HANS WILHELM	
	Examiner	Art Unit	
	Jeffrey A. Shapiro	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 January 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *12* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, directed towards Claims 10-13 in Paper No. 10, is acknowledged.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims10 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how a feed rate can be set for a "rotary vane" in line 3 of Claim 10.

It is unclear what is meant by the phrase "further comprising using is a pneumatic" in line 1 of Claim 13.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kierbow et al (US 4,265,266). Kierbow et al discloses the following.

As described in Claim 10;

1. setting a feed rate for the rotary vane feeder (see figure 26, element 448);

2. adjusting a discharge rate (see figure 22, elements 396, 402 and 404) of the metering device to a value that is lower than the feed rate of the preceding rotary vane feeder (see abstract, lines 5-15, for example), so that return feed from the rotary-vane feeder to the container takes place (note that the system of Kierbow et al is capable of performing the method as described in Claim 10, since the incoming feed rate from the previous container can be made to be higher than the outgoing flow rate from the meter);

As described in Claim 11;

3. said adjusting takes into account a filling state of an intermediate container between the rotary-vane feeder and the metering device (again, see abstract, last 12 lines, for example);

As described in Claim 12;

4. altering a speed of rotation of the metering device to regulate discharge of the metering device (see figure 22, particularly elements 396 and 404);

As described in Claim 13;

5. using a pneumatic feed and altering at least one of an air amount and an air speed to regulate discharge of the metering device (see figure 4, elements 94, 95 and 100, for example);

3. Claims 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Iwamura et al (JP 62215424 A). Iwamura et al discloses the following.

As described in Claim 10;

1. setting a feed rate (Wt) for the rotary vane feeder;

2. adjusting a discharge rate value that is lower than the feed rate of the preceding rotary vane feeder, so that return feed from the rotary-vane feeder to the container takes place (note that the system of Iwamura et al is capable of performing the method as described in Claim 10, since the incoming feed rate from the previous container can be made to be higher than the outgoing flow rate from the meter—see abstract and constitution);

As described in Claim 11;

3. said adjusting takes into account a filling state of an intermediate container (10) between the rotary-vane feeder and the metering device (see abstract);

As described in Claim 12;

4. altering a speed of rotation of the metering device to regulate discharge of the metering device (see constitution);

As described in Claim 13;

5. using a pneumatic feed and altering at least one of an air amount and an air speed to regulate discharge of the metering device (see constitution);

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 10-13 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-15 of U.S. Patent No. 6,041,664. Although the conflicting claims are not identical, they are not patentably distinct from each other because they describe a method of determining instantaneous mass flow and obtaining an output of a metering device downstream of said flowmeter (see Claims 1 and 15, for example). In addition, the apparatus described in Claims 8-14 is capable of performing the method as described in the claims of the instant application.

6. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No. 5,359,900 in view of Kierbow et al. The '900 patent discloses an apparatus for measuring the mass throughput of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

7. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No. 5,184,892 in view of Kierbow et al. The '892 patent discloses a system and apparatus for continuous pneumatic gravimetric metering and/or mixing of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

8. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No. 5,255,830 in view of Kierbow et al. The '830 patent discloses an apparatus for measuring the mass throughput of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

9. Claims 10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-25 of U.S. Patent No. 5,301,555 in view of Kierbow et al. The '555 patent discloses an apparatus for measuring the mass throughput of a flow of pourable material and describes apparatus which in combination with Kierbow et al, provides apparatus and the steps described in the claims of the instant application.

10. Claims 10-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 09/508,235 in view of Kierbow et al. The combination provides the apparatus and steps described in the claims of the instant application.

This is a provisional obviousness-type double patenting rejection.

11. Claims 10-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 09/720,831 in view of Kierbow et al. The combination provides the apparatus and steps described in the claims of the instant application.

This is a provisional obviousness-type double patenting rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kierbow et al (US 4,410,106 and US 4,427,133), Mylting, Weller, Yellot, Walters, Muller et al, Swartz, Giles, Davenport and Degady et al are all cited as examples of pneumatic conveying systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)-306-4173. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-308-2571 for regular communications and (703)-308-2571 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

Jeffrey A. Shapiro
Patent Examiner,
Art Unit 3651

DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

April 22, 2002